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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 000786

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DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [OSCE](#) [TU](#)

SUBJECT: TURKISH PROFESSORS STAND TRIAL FOR REPORT ON
MINORITIES

REF: A. 04 ANKARA 6116

[1](#)B. ANKARA 262

Classified by Deputy Polcouns Charles O. Blaha; reasons 1.4 b
and d.

[1](#)1. (C) Summary: Trial proceedings began February 15 in the
case against two Turkish professors accused of inciting
hatred and denigrating "Turkish identity" in a 2004 report on
minorities. The report states that non-Muslims in Turkey
have second-class status and calls on the state to recognize
the existence of ethnic, linguistic, and religious
minorities. The professors drafted the report as members of
a GOT human rights advisory body. One defendant ridiculed
the prosecutor, whom he accused of abusing his authority.
Both professors rejected the assertion that the report is
offensive, maintaining that it offers recommendations for
improving social harmony. The trial will continue in April.
The report, which GOT leaders angrily denounced when it was
released, delves directly into the sensitive, unresolved
issue of Turkish identity. End Summary.

Professors Charged for Report on Minorities

[1](#)2. (U) An Ankara criminal court began hearings February 15 in
the trial of two university professors charged for drafting a
2004 report on minorities in Turkey (reftel A). The
professors -- Baskin Oran, of Ankara University, and Ibrahim
Kaboglu, of Istanbul University -- prepared the report as
part of their work as members of the GOT's Human Rights
Consultation Board. FM Gul and other high-level GOT
officials angrily denounced the report when it was released,
and Turkish nationalists ripped the document out of Kaboglu's
hands and tore it up on live TV when the report was
officially released at an October 2004 press conference.

[1](#)3. (U) The report states that Turkey continues to apply a
narrow, legalistic definition of "minority" rooted in a
misinterpretation of the 1923 Lausanne Treaty. It notes that
the West long ago recognized the existence of ethnic,
linguistic, and religious minorities, and calls on Turkey to
do the same. It states that non-Muslims have second-class
status in Turkey, and are effectively barred from careers in

state institutions. It recommends that the term "Turk," which excludes some ethnic and religious groups, be replaced by the more inclusive "of Turkey."

14. (U) A prosecutor charged the professors under Penal Code articles 301 (denigrating "Turkish identity") and 216 (inciting hatred and enmity). The prosecutor is seeking a five-year prison sentence in the case, but this is considered extremely unlikely even if the court rules for conviction.

15. (U) The February 15 hearing drew a large audience to the tiny courtroom. In addition to Embassy poloff, diplomats from the European Commission's Ankara office and the embassies of several EU countries attended. The defendants -- in professorial mode -- each gave long statements in their own defense.

Defendant Ridicules Prosecutor

16. (SBU) Oran, a longstanding Embassy contact not known for humility, caustically mocked the prosecutor and ridiculed the indictment. He detailed what he said were the many factual errors in the document, which he said the prosecutor could have avoided by simply checking the encyclopedia. Oran asserted that he deserves a "better indictment," adding, "I believe that I deserve better than this prosecutor, who pretended to be an academician and tried to undermine a scientific thesis, but in each case made himself look worse." He told the court he wanted to issue a counter indictment accusing the prosecutor of violating free expression, interfering with academic autonomy, and abusing the power of the judiciary.

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17. (U) Oran challenged the prosecutor's assertion that the term "Turk" refers only to Turkish citizenship, with no ethnic meaning, and that use of the term "of Turkey" represents a threat to national unity. He noted that Turkish law requires that the deputy principals of schools for minorities be "of Turkish origin and of Turkish citizenry." If "Turk" refers only to citizenship, he asked, then what does it mean to be both a Turkish citizen and of Turkish origin? Oran followed with other examples of Turkish laws and court rulings referring to Greek Orthodox Christians and other minorities as "foreigners," despite the fact that they are native-born citizens of Turkey.

18. (U) Oran asked the court whether the prosecutor knew that the first person to use the term "of Turkey" was Mustafa Kemal Ataturk, the founder of modern Turkey and unparalleled national hero. Ataturk used the term repeatedly in his hand-written draft of the 1923 Constitution, and repeated it in speeches, Oran said. "If there is separatism (in this term) then it was first initiated by Mustafa Kemal," Oran said. "I'm not making a comment -- I'm only presenting this to the attention of the prosecutor."

19. (U) Far from presenting a threat, Oran continued, the term "of Turkey" embraces all the groups comprising the national population. In fact, it is the term "Turk" that is divisive, because it represents a concept that alienates minorities, he averred. "What if (a citizen of Turkey) is not a Turk or does not consider himself a Turk?" he asked the court. "What shall we do? Kill him? Or shall we force him to say he is a Turk? Let me ask the prosecutor, which action should we take?"

110. (U) Kaboglu gave a less vitriolic statement, arguing that the report is well within the realm of free expression. He said it is "very sad" that he has to defend himself in court for a report he was directed to write by a government advisory body. He said the report includes no insults or incitements to violence, just recommendations to improve

minority rights. If the Turkish leaders do not like the recommendations, they can ignore them, but how can recommendations constitute a crime?

Trial to Continue in April

¶11. (U) The court adjourned and set the next hearing date for April 10 on the Penal Code article 216 charges. However, the court determined that it could not try the defendants under article 301 without permission from the Justice Ministry. The Penal Code in effect at the time of the alleged crime required Justice Ministry approval for article 301 trials, and the court stated that it will request such permission for this case. Article 301 has been used to charge defendants in a number of recent, high-profile speech cases, including the case against novelist Orhan Pamuk. An Istanbul court ultimately dropped the case against Pamuk when Justice Minister Cicek declined to respond to the request for permission to proceed with the trial (reftel B).

Comment: Turkey Struggles With Identity

¶12. (C) This is only one of many speech-related cases in the Turkish judicial system, but it is noteworthy for several reasons. The defendants prepared their report on behalf of a GOT human rights advisory board. The board, which included both civil society and government representatives, voted to approve the text (though many of the government members were absent during the vote). Nevertheless, when news of the report's content hit the press, GOT leaders reacted angrily. Some claimed the board had no relationship to the government, despite the fact that its meetings were held in a GOT office. The report struck a nerve because it delves directly into the sensitive topic of Turkish identity. Since the founding of the Republic of Turkey in 1923, national identity has been

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based on the Turkish language and the Islamic faith. Turkey today continues to struggle with its identity. PM Erdogan recently drew harsh criticism from the secular establishment for suggesting that Islam could be the super-identity linking people of different ethnic/cultural backgrounds (i.e. Turks and Kurds), and in March 2005 the Turkish General Staff issued a statement referring to Kurdish children accused of trying to burn the Turkish flag as "so-called citizens."

WILSON